

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6152

PETITION OF WILLIAM KARAS
(Hearing held September 13, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, October 27, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Sections 59-C-1.323(a) and 59-A-5.33. The petitioner proposes the construction of a new single-family dwelling that requires a variance of 24.70 feet as it is within twenty-five (25) feet of the front lot line. The required established building line is 49.70 feet.

The petitioner was accompanied at the public hearing by his wife; Eric Gronning, an architect; and Tania Tully of Montgomery County Historic Preservation Commission.

The subject property is Lot 9, Block 33, Capitol View Park Subdivision, located at 10009 Menlo Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 00997375).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a new single-family dwelling.
2. The petitioner testified that the property was purchased in 2005 and that it is in the Capitol View historic district, but that it is not a contributing resource to the district. The petitioner testified that a new house will be built on the foundation of the existing house and that the proposed structure will be in harmony with the other houses on the street. The petitioner testified that the proposed construction has received the approval of the Historic Preservation Commission (HPC) and that the HPC's approval requires that the house be built at the same location as the existing structure, which is sited 25 feet from the street. See Exhibit Nos. 12(a) [Historic Area Work Permit No. 397538] and 12(b) [Application for Historic Area Work Permit].

3. The petitioner testified that the new house must meet an established building line (EBL) requirement as determined by the Department of Permitting Services (DPS). The petitioner testified that the subject property fronts on two streets, Leafy and Menlo Avenues, and that the other properties on Leafy Avenue share this characteristic. See Exhibit Nos. 4 [site survey and EBL calculations] and 8 [zoning vicinity map].
4. Mr. Gronning testified that the existing house is a dilapidated and unlivable structure that will be replaced with a house that conforms to the historic character of the neighborhood. Mr. Gronning testified that Lots 3 through 7 were used in the calculation of the established building line (EBL) and that Lots 8 through 12 could not be used in the EBL calculation because as they either have non-conforming houses or are corner lots. Mr. Gronning testified that the houses on either side of the subject property do not meet the required front lot line setback and could not be used in the calculation of the EBL. Mr. Gronning testified that the application of EBL to the subject property results a very small buildable envelope and that compliance with the EBL results in the subject property being out of compliance with the HPC approval. See Exhibit No. 11 [site location and established building line diagram].
5. The petitioner testified that the house on Lots 1 and 2 is one the oldest homes in Capitol View and that the land slopes from the high of Lot 1 to the low of Lot 12, and also slopes from Menlo Avenue to Leafy Avenue. The petitioner testified that if the house were to be built within the required established building envelope, the topography in that area drops 6 to 7 feet.
6. Ms. Tully testified that the entire block in which the subject property is located is within the historic district and that this happens to be a section of the district that has quite a few noncontributing resources. Ms. Tully testified that it has been the HPC's position to require noncontributing structures in the historic district that are rebuilt or replaced and are currently located further back than the required front lot line setback, to be moved forward on the lot to be in line with the contributing structures.
7. Ms. Tully testified that the HPC in its review of new construction in the historic district looks at the special relationships between buildings, as well as the view from the streets, and the rhythm of the area, so as to keep the structures consistent with the historic district area. Ms. Tully testified that none of the houses that surround the subject property are contributing resources in the district and that the proposed house would be rebuilt on the existing foundation and that the HPC approval was conditioned upon keeping house where it is.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the majority of the houses that surround the subject property could not be used in the calculation of the required established building line and that the houses that are located further back from the street and away from the subject property were used in the calculation of the established building line. The Board finds that the required EBL is in direct conflict with the goals and requirements of the historic district master plan, which provides that new structures should conform and contribute to the characteristic patterns that are identified as being key to the nature of the historic district, and that the location of the subject property as it is situated in the Capital View historic district is a unique circumstance affecting and constraining the development of the subject site.

The Board finds that the application of the established building line to the subject property disproportionately and adversely impacts the lot more than any of the neighboring properties and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a new single-family dwelling is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the new single-family dwelling will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new construction will comply with the existing historic district streetscape and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 24.70 feet from the required established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioners shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 27th day of October, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.